

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

LAUREL PARK COMMUNITY, LLC, a Washington limited liability company; TUMWATER ESTATES INVESTORS, a California limited partnership; VELKOMMEN MOBILE PARK, LLC, a Washington limited liability company; and MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON, a Washington non-profit corporation,

Plaintiffs,  
vs.

CITY OF TUMWATER, a municipal corporation,

Defendant.

NO. Co9-5312 BHS

**DECLARATION OF JEFFREY S.  
MYERS IN SUPPORT OF  
DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
MOTION TO STRIKE**

PURSUANT TO 28 U.S.C. § 1746, Jeffrey S. Myers, hereby declares as follows:

1. I am the attorney for the defendant City of Tumwater in the above entitled matter. I am over the age of 18, competent to be a witness and make this declaration on personal knowledge.

2. Attached to this declaration as **Exhibit A** is a true and correct copy of excerpts from the deposition of James W. Andersen, taken January 29, 2010, which are cited in the City's Response to Plaintiffs' Motion for Summary Judgment.

3. Attached to this declaration as **Exhibit B** is a true and correct copy of excerpts from the deposition of William Schmicker, taken February 4, 2010 which are cited in the City's Response to Plaintiffs' Motion for Summary Judgment.

1       4. Attached as **Exhibit C** is a true and correct copy of excerpts from the  
 2 deposition of Robert Eichler (including Deposition Exhibit 4) taken February 15, 2010,  
 3 which are cited in the City's Response to Plaintiffs' Motion for Summary Judgment.

4       5. Attached as **Exhibit D** is a true and correct copy of excerpts from the  
 5 deposition of Jeanne-Marie Wilson, taken February 15, 2010, which are cited in the City's  
 6 Response to Plaintiffs' Motion for Summary Judgment.

7       6. Attached as **Exhibit E** is a true and correct copy of TMC 18.08.020-.040,  
 8 TMC 18.10.020-.040 and TMC 18.12.020 -.040, which are referenced in the City's  
 9 Response Brief.

10      7. The Court should strike the Declaration of John Woodring (Doc. 15-9) filed  
 11 in support of plaintiff's motion for summary judgment because it purports to give factual  
 12 support to plaintiffs' argument and does not comply with the requirements of FRCP 56(e).  
 13 Mr. Woodring is an attorney for plaintiff, and has not been identified as a lay witness nor  
 14 qualified as an expert witness in this case. A supporting affidavit must be made on  
 15 personal knowledge, set out facts that would be admissible in evidence, and show that the  
 16 affiant is competent to testify on the matters stated. FRCP 56(e).

17      8. Defendant therefore requests, pursuant to Local Rule CR 7(g) that this Court  
 18 strike the inadmissible portions of the Woodring Declaration as follows:

PARAGRAPH OBJECTED TO	STATEMENT OF OBJECTION	FRE GROUND FOR OBJECTION
¶ 3, Sentence 1	Statement does not set out facts. Strike as irrelevant, misleading and prejudicial. Presents an opinion by lay witness and is not helpful to a clear understanding of the testimony.	402, 403, 701
¶ 3, Sentence 2	Strike as misleading and prejudicial; contains hearsay and is an improper characterization of evidence. <sup>1</sup>	403, 802, 1004

26      <sup>1</sup> Declarant purports to quote Council member Ed Stanley's comments at a hearing. However, the Ex. D at 3, attached to Missal Decl. cited in support is not a certified transcript of hearing, but rather uncertified minutes of the meeting taken by Jessica Tate.

1	¶ 4 Sentence 1	Statement does not set out facts. Strike as irrelevant, misleading and prejudicial. Presents an opinion by a lay witness and is not helpful to a clear understanding of the testimony.	402, 403, 701
2	¶ 4 Sentence 2	Strike as irrelevant, and references hearsay.	402, 802
3	¶ 4 Sentence 3	Strike as irrelevant, prejudicial and misleading conclusion based on hearsay.	402, 403, 802
4	¶ 4 Sentence 4	Strike as an lay opinion based on mischaracterized evidence and hearsay.	402, 602, 802
5	¶ 4 Sentence 6	Strike because presents lay opinion not grounded in personal knowledge. Statement is misleading and prejudicial. <i>See characterization of action as "To support this position..."</i>	403, 602, 701
6	¶ 5, Sentence 1	Strike as misleading and prejudicial, lacks personal knowledge, presents an opinion by a lay witness.	403, 602, 701
7	¶ 5, Sentence 2	Strike as misleading and prejudicial, and contains legal argument. Sentence qualified by introduction "To overcome the legal infirmities" presents an opinion by a lay witness. Strike also as lacks personal knowledge as to "Tumwater's real goals and intent."	403, 602, 701,
8	¶ 6	Strike entire paragraph because it contains hearsay, is not based on personal knowledge, presents legal argument and is misleading and prejudicial.	403, 602, 802
9	¶ 7, Sentence 2	Strike as misleading and prejudicial, speculative, and presents opinion and argument.	403, 602, 701, 702
10	¶ 8, Sentence 1	Sentence is not factual. The statement, "These actions are important to the Court's analysis" clearly indicates legal argument that should be excluded pursuant to 56(e). Strike also as opinion not presented by a qualified expert witness on which the expert is competent to provide an opinion.	403, 701, 702
11	¶ 8, Sentence 2	Strike because presents legal argument and/or opinion not presented by a qualified expert witness. Statement is misleading and prejudicial. <i>See characterization of statements as "self serving."</i>	403, 701, 702
12	¶ 8, Sentence 3	Strike because presents legal argument and/or opinion not presented by a qualified expert witness. Statement is misleading and prejudicial. <i>See comment "Not surprisingly..."</i>	403, 701, 702

1	¶ 8, Sentence 4	Strike because presents legal argument and/or opinion not presented by a qualified expert. Statement is misleading and prejudicial. <i>See</i> comment, that predicates are "incomplete and one-sided."	403, 701, 702
2			
3			
4	¶ 9, Sentence 1	Strike because presents legal argument and/or opinion not presented by a qualified expert. Statement is misleading and prejudicial. <i>See</i> comments "Tumwater's predisposition," and the "very unusual step..."	403, 701, 702
5			
6			
7	¶ 9, Sentence 2	Strike hearsay statements. Declarant purports to quote Commissioner Mandeville, but the content within quotations is from uncertified minutes summarizing a Tumwater City Council meeting taken by Valerie Gow. Strike also because declarant lacks personal knowledge.	602, 802
8			
9			
10	¶ 9, Sentence 3	Strike because presents legal argument and/or lay opinion not helpful to a clear understanding of the testimony. Statement is speculative as to Commissioner Mandeville's state of mind and is misleading and prejudicial.	403, 602, 701
11			
12			
13	¶ 9, Sentence 4	Strike as misleading and prejudicial, presents legal argument, lay opinion and/or opinion not presented by a qualified expert and draws a legal conclusion.	403, 602, 701, 701
14			
15			
16	¶ 10	Strike as irrelevant, hearsay statements and legal argument.	402, 602, 802
17			
18	¶ 11	Strike as irrelevant, hearsay statements and legal argument.	402, 602, 802
19			
20	¶ 12, Sentence 2-3	Strike as irrelevant, and states expert opinion by person not qualified as an expert.	402, 702
21			
22	¶ 13-15	Strike these paragraphs in their entirety because they contain argument and conclusions of law, hearsay, and lay opinion and they are prejudicial and misleading.	403, 602, 701, 802
23			
24			
25	¶ 16	Strike because lacks foundation, and presents hearsay, legal argument and/or lay opinion not based on personal knowledge and speculates as to the City Council's response to a recommendation. <i>See</i> "This recommendation was ignored..."	403, 602, 701, 802
26			
	¶ 17	Strike entire paragraph as irrelevant, misleading and prejudicial, and presents opinion and argument.	402, 403, 602, 701

1 I declare under penalty of perjury under the laws of the state of Washington and the  
2 United States of America that the foregoing is true and correct.

3 Executed this 22nd day of March, 2010 at Tumwater, Washington.  
4

5 LAW, LYMAN, DANIEL,  
6 KAMERRER & BOGDANOVICH, P.S.  
7

8   
Jeffrey S. Myers, WSBA #10390  
9 LAW, LYMAN, DANIEL, KAMERRER  
10 & BOGDANOVICH, P.S.  
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16  
17  
18

# **EXHIBIT A**

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James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

Page 1

1 UNITED STATES DISTRICT COURT

2 THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

3

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4 LAUREL PARK COMMUNITY, LLC, a )  
5 Washington limited liability )  
6 company; TUMWATER ESTATES )  
7 INVESTORS, a California limited )  
8 partnership; VELKOMMEN MOBILE )  
9 PARK, LLC, a Washington limited )  
liability company; and )  
MANUFACTURED HOUSING COMMUNITIES )  
OF WASHINGTON, a Washington )  
non-profit corporation, )  
)

Petitioner(s), )  
)

vs. )

No. C09-5312 BHS

CITY OF TUMWATER, a municipal )  
corporation, )  
)

Defendant(s). )

15 DEPOSITION UPON ORAL EXAMINATION OF

16 JAMES W. ANDERSEN

17 January 29, 2010

Tumwater, Washington

19 Taken Before:

20 SUE E. GARCIA, CCR # 2781, RPR  
Registered Professional Reporter  
of

21 Capitol Pacific Reporting, Inc.

22 2401 Bristol Court SW, #A-104, Olympia, WA 98502

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January 29, 2010

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James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

Page 6

1           The court reporter here is taking down a verbatim  
2 transcript so that that can be used in court  
3 proceedings. And it's important that we try not to  
4 talk on top of each other. And so when I ask you a  
5 question, make sure I'm done, and then answer the  
6 question so that she can take things down.

7           If there are objections made -- Mr. Olsen may make  
8 objections -- let him make his objection, and then  
9 normally, unless he instructs you otherwise, you will  
10 get to answer the question, and we'll proceed on from  
11 there.

12          If you need to take break for any reason, let us  
13 know. But if there is a question pending, what I would  
14 like you to do is finish the answer to that question,  
15 and then we'll take a break.

16          And it's also important that we try to understand  
17 each other so that you understand the question I'm  
18 asking. If you have any confusion at all, please don't  
19 hesitate to ask me to clarify the question, and I'll  
20 try to rephrase it so that you have a good  
21 understanding. If you just answer the question, I'm  
22 going to assume that you understood it. Okay?

23 A        Okay.

24 Q        You are the owner of Velkommen Mobile Home Park? 7

25 A        No. I am part of the LLC.

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Laurel Park Community, LLC, et al. v. City of Tumwater

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1 Q Part of the LLC?  
2 A Correct.  
3 Q What's your position with the LLC?  
4 A Manager.

5 Q Okay. And how long have you been the manager of the  
6 LLC?

7 A I believe the LLC came into an existence about ten  
8 years ago. I've been managing it, though, since senior  
9 in high school.

10 Q Do you live there?

11 A No. I have in the past.

12 Q And when were you a senior in high school?

13 A Back in '84.

14 Q '84?

15 A '84, '85.

16 Q Tumwater High School?

17 A Yep.

18 Q And what was your education after high school?

19 A I went to South Puget Sound for about a year and then  
20 started working for the State.

21 Q And what's your employment history after South Puget  
22 Sound Community College?

23 A I've worked Mervyn's for about four years and then  
24 started working for the State thereafter.

25 Q What do you do for the State?

James W. Andersen  
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1 A We're hoping that your ordinance goes away.

2 Q So you haven't filed any tax appeal of your current  
3 assessment?

4 A No.

5 Q Do you think that operation of a mobile home park is  
6 detrimental to the properties that surround your mobile  
7 home park?

8 A No.]

9 Q Do you believe that maintaining or preserving  
10 affordable housing is a legitimate public goal for the  
11 City of Tumwater to be interested in?

12 A Yes.

13 Q And is a mobile home park like the one you operate a  
14 source of affordable housing?

15 A Yes.]

16 Q Okay. And when you testified to the city council, I  
17 believe you expressed some concerns about the rates  
18 that you were charging your tenants. Do you recall  
19 that?

20 A The rates. What rates? The rent?

21 Q The rental rates.

22 A I'm concerned with what we will be forced to charge  
23 them.

24 Q Explain what --

25 Is there anything in the mobile-home-park zoning

James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

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1 viable.

2 Q Have you done investigations as to the cost to extend  
3 city sewer?

4 A Yes, I have.

5 Q Okay. What types of costs are involved in doing that?

6 A According to your guys down here in your own office  
7 here, it was about -- I believe they had said three --  
8 three to -- about \$300,000 for the city sewer, and  
9 that's doesn't include the construction part of it.  
10 Over \$100,000 just to connect up to our existing water  
11 lines, and that is not running meters out to  
12 individuals and does not, I don't believe, include  
13 running it down the street either. And the city sewer  
14 is still a ways away. It's on the corner of Littlerock  
15 Road. So I have to pay an additional to bring it to  
16 the park.

17 Q And if you wanted to redevelop it to some other use  
18 besides the mobile home park, you would have to incur  
19 all of those costs, as well, would you not?

20 A Correct, at a higher density.

21 Q Do you know when your parents purchased the mobile home  
22 park? 1977 I believe is what you said.

23 A I believe I told you '75.]

24 Q '75. Do you know how much they paid?

25 A No, I don't.

James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

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1       we've paid all these years, stripped that right away  
2       because we've been paying for medium density and now  
3       we're at basically low density. So here we've been  
4       paying all this money in taxes, and now -- now we're  
5       being --

6   Q   And you've been paying that money since -- since it was  
7       annexed into the City and --

8   A   Be prior to that.

9   Q   How long has it been zoned medium family, or . . . ?

10   A   I'm not aware.

11   Q   "Multifamily medium," I think, is the correct term.

12   A   I'm not aware of the exact time.

13   Q   Are you aware of any time in the past before the  
14       adoption of the mobile-home-park zoning when it was  
15       zoned something other than medium family or multifamily  
16       medium?

17   A   I didn't keep up on the zoning.

18   Q   Okay. When did you first learn about the proposal to  
19       change to a mobile home park or manufactured housing  
20       community district?

21   A   I believe I either I saw it in the paper, or Phyllis  
22       gave me a notice that came in the mail, one or the  
23       other.

24   Q   Was it an article, or was it a notice that the City had  
25       published that it was considering the ordinance? Do

James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

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1 Q I'm asking specifically about your conversations with  
2 your mother concerning that.

3 A We have talked about selling it and whether or not  
4 there would be houses being put in there or developing  
5 it ourselves.

6 Q Okay. When did you discuss developing it yourself with  
7 your mother?

8 A It wasn't real in-depth talk. It was just, you know,  
9 just like little whims. It wasn't, "Let's go talk to [REDACTED]  
10 an architect. Let's go do all this." It was  
11 just . . .

12 Q So you never consulted with a land-use planner?

13 A No. Not -- I myself never have.

14 Q Do you know if your mother ever did?

15 A I have no idea.

16 Q As the managing agent or the managing partner of

17 Velkommen Mobile Park, LLC, would you say you're in a  
18 position to know if that consultation occurred?

19 A In the last three years I've been in that position.  
20 Even though I've been managing the park, I wasn't part  
21 of the LLC general manager.

22 Q So you only became the general manager of the LLC about  
23 three years ago?

24 A I believe it was three years ago. Could be four.

25 Q 2006?

James W. Andersen  
Laurel Park Community, LLC, et al. v. City of Tumwater

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1 A About that.

2 Q Who was the general manager of the LLC before that?

3 A Nobody.

4 Q What was the decision-making structure before you  
5 became the general manager?

6 A Well, she made her decisions of what she thought needed  
7 to be done. Sometimes she'd work with contractors, get  
8 work done in the park. Other times I would.

9 Q With regard to possible redevelopment of the park, was  
10 there any -- ever any written plans that you have seen  
11 to convert it to any specific use?

12 A Written plans, I have not seen any.

13 Q And without written plans there were certainly no  
14 applications made to Thurston County or the City of  
15 Tumwater for approval to convert it to another use?

16 A Not since '85 that I am aware of.

17 Q Okay. I want to go ahead and have . . .

18 (Deposition Exhibit No(s). 6 marked  
19 for identification.)

20  
21 Q (By Mr. Myers) This is the brokerage agreement that was  
22 provided to the City in the response to the discovery  
23 in this case.

24 Are you familiar with this document?

25 A Yeah. I think I've seen it.

January 29, 2010

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1 C E R T I F I C A T E

2 I, SUE E. GARCIA, a duly authorized Court Reporter and  
3 Notary Public in and for the State of Washington, residing  
4 at Tacoma, do hereby certify:

5 That the foregoing deposition of JAMES W. ANDERSEN was  
6 taken before me on the 29th of January, 2010, and thereafter  
7 transcribed by me by means of computer-aided transcription,  
8 that the deposition is a full, true, and complete transcript  
9 of the testimony of said witness;

10 That the witness, before examination, was by me duly  
11 sworn to testify to the truth, the whole truth, and nothing  
12 but the truth, and that the witness RESERVED signature;

13 That I am not a relative, employee, attorney, or  
14 counsel of any party to this action or relative or employee  
15 of any such attorney or counsel, and I am not financially  
16 interested in the said action or the outcome thereof;

17 That upon completion of signature, if required, I shall  
18 herewith securely seal the original deposition transcript  
19 and serve the same upon JEFFREY S. MYERS, counsel for the  
20 DEFENDANT(S).

21 IN WITNESS HEREOF, I have hereunto set my hand and  
22 affixed my official seal this February 9, 2010.

23

24

25

SUE E. GARCIA  
WA Lic. No. 2781

January 29, 2010

Capitol Pacific Reporting 1-800-407-0148

## EXHIBIT B

1  
2                   UNITED STATES DISTRICT COURT  
3                   WESTERN DISTRICT OF WASHINGTON  
4                   AT TACOMA

5                   LAUREL PARK COMMUNITY, LLC, a )  
6                   Washington limited liability )  
7                   company; TUMWATER ESTATES )  
8                   INVESTORS, a California limited )  
9                   partnership; VELKOMMEN MOBILE )  
10                  PARK, LLC, a Washington limited )  
11                  liability company; and )  
12                  MANUFACTURED HOUSING COMMUNITIES )  
13                  OF WASHINGTON, a Washington )  
14                  non-profit corporation, )  
15                  Plaintiffs, )  
16                  vs. )  
17                  CITY OF TUMWATER, a municipal )  
18                  corporation, )  
19                  Defendant. )

No. C09-5312 BHS

COPY

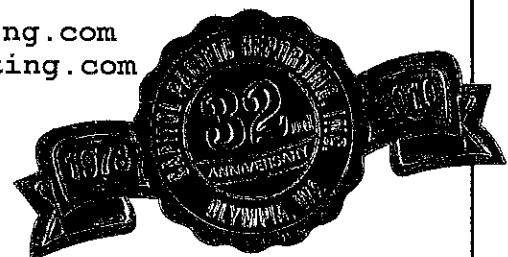
15                   DEPOSITION UPON ORAL EXAMINATION OF

16                   WILLIAM SCHMICKER

17                   February 4, 2010  
18                   Tumwater, Washington

19                   Taken Before:  
20                   Connie Church, CCR #2555, RPR, CRR  
21                   Certified Court Reporter  
22                   of  
23                   CAPITOL PACIFIC REPORTING, INC.  
24                   2401 Bristol Court SW, Suite A-104  
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WILLIAM SCHMICKER - By Mr. Myers

1 A You know, I really don't know.

2 Q With regard to manufactured housing parks, do you believe  
3 that that is a form of affordable housing?

4 A Yes.

5 Q And do you believe that maintaining affordable housing is  
6 a legitimate public goal?

7 A Yes.

8 Q Let me ask you about the space rent that you charge on  
9 the property. What are the current space rents at  
10 Tumwater Mobile Estates? And before we do that, why  
11 don't we have this marked as an exhibit.

12 (Deposition Exhibit No. 1 marked  
13 for identification.)

14 Q (BY MR. MYERS) This is Exhibit 1, which is the rent roll  
15 that you provided.

16 A At the time that that rent roll was provided, average  
17 rent was about \$437, which includes all of our utilities,  
18 charges. The numbers you see there are just the basic  
19 space rent. And we charge for water, sewer, trash, cable  
20 TV and a - there's a storm sewer charge.

21 Q So the basic rental rate would be under the column  
22 "Actual Rate"?

23 A Yes. I think so. Let me look at it. You know, I think  
24 you should disregard the "Standard Rate" column because I  
25 don't think that is an applicable column. The

WILLIAM SCHMICKER - By Mr. Myers

1 A Well, I don't think it's very well written. And he says  
2 a full feasibility study would be required. And I don't  
3 think he would purport that this is such a study. He's  
4 just, you know, putting some terms in there. And so, you  
5 know, I would personally take exception with, you know,  
6 the language he has in here.

7 Q What would you take - specifically would you take  
8 exception with?

9 A Well, he doesn't mention the fact that there's commercial  
10 property in the area.

11 Q Okay.

12 A You know. So I think that's . . . You know. How can  
13 you miss that?

14 Q You see under --

15 A I don't think he probably ever thought anybody was really  
16 going to be reading that paragraph with great interest  
17 so

18 Q Let me refer you then to the previous page under "Legally  
19 Permissible Use," where he describes the site being  
20 split-zoned, multifamily high and single family medium  
21 residential. Do you know if those zones allow commercial  
22 development?

23 A You know, I'm not familiar with your zoning ordinances,  
24 you know, to the degree that I would need to be. But  
25 it's my belief from observation in the past and

WILLIAM SCHMICKER - By Mr. Myers

1 experience that municipalities are willing to rezone  
2 multifamily land for commercial land because of the tax -  
3 sales tax issue.

4 Q Is it your experience that they're willing to rezone  
5 mobile home parks as commercial property in order to get  
6 that sales tax?

7 A It is. I've seen it done, yes. But I will confess to  
8 you I've seen it resisted. Okay.

9 Q And then on Bates page 42, under "Subject Site 'As  
10 Improved,'" Mr. Robinson's appraisal says that, "The  
11 remaining option, to remain as is, is considered the best  
12 option."

13 And this is under "Physically Possible Use." Do you  
14 see where he says that?

15 A "The remaining option, to remain as is, is considered the  
16 best option." Okay.

17 Q Yes. Do you agree or disagree with that statement?

18 A At the present time, I agree.

19 Q Okay. And do you agree with his conclusion that as  
20 improved, the highest and best use of the Tumwater Mobile  
21 Estates property is as a manufactured home park?

22 A At the present time, you know, with - without the  
23 presence of this ordinance, I would have concurred with  
24 that.

25 Q So let me then ask you: Before the city adopted that

WILLIAM SCHMICKER - By Mr. Myers

1 A Is that relevant?

2 Q I'm trying to figure out what your experience is with  
3 churches.

4 A Well, we bought a piece of property off of a church  
5 recently that we developed a self-storage project on and  
6 it had been given to them. That's how I know that.

7 Q Are you familiar with what has been called a megachurch?  
8 Ever heard that term?

9 A No.

10 Q Familiar with an individual by the name of Robert  
11 Schuller and the Crystal Cathedral?

12 A I think I've heard of Robert Schuller. But I'm not . . .

13 Q Do you think that his use of a church would be  
14 economically viable?

15 A I have no idea.

16 Q Okay. Let's see.

17 A ~~If he wants to pay me 26 million for the property though,~~  
18 ~~we'll make a deal.~~

19 Q Let me ask you this: Have you done any analysis to  
20 pencil out whether any of the conditional uses that are  
21 allowed in the mobile home park zoning would be  
22 economically viable?

23 A I've not done any calculations to determine whether or  
24 not they are. But, you know, I mean my experience in the  
25 business tells me that you don't see these kinds of uses,

WILLIAM SCHMICKER - By Mr. Myers

particularly on high value land.

2 MR. MYERS: Okay. Those are all the questions I  
3 have. Do you have any?

4 MR. BRANSON: Anything you want to clarify?

5 THE WITNESS: No. I think not.

6 (Concluded at 3:15 p.m.)

7. \_\_\_\_\_ (Signature reserved.)

8

19

Q

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乙子

Myers p. 21

1 C E R T I F I C A T E  
2

3 I, CONNIE CHURCH, a duly authorized Court Reporter and  
4 Notary Public in and for the State of Washington, residing at  
5 Montesano, do hereby certify:

6 That the foregoing deposition of WILLIAM SCHMICKER was  
7 taken before me on February 4, 2010, and thereafter transcribed  
8 by me by means of computer-aided transcription; that the  
9 transcript is a full, true and complete transcript of the

10 testimony of said witness;

11 That the witness, before examination, was by me duly  
12 sworn to testify the truth, the whole truth and nothing but the  
13 truth, and that the witness reserved signature;

14 That I am not a relative, employee, attorney or  
15 counsel of any party to this action or relative or employee of  
16 any such attorney or counsel, and I am not financially  
17 interested in the said action or the outcome thereof;

18 That upon completion of signature, if required, I  
19 shall herewith securely seal the original transcript and serve  
20 same upon Mr. Jeff Myers, counsel for the Defendants.

21 IN WITNESS WHEREOF, I have hereunto set my hand and  
22 affixed my official seal this 9th day of February, 2010.

23  
24   
25 CONNIE CHURCH  
CERTIFIED COURT REPORTER  
CCR #2555

# EXHIBIT C

Laurel Park v. City of Tumwater  
Deposition of Robert Eichler

Page 1

1  
2                   UNITED STATES DISTRICT COURT  
3                   WESTERN DISTRICT OF WASHINGTON  
4                   AT TACOMA

5                   LAUREL PARK COMMUNITY, LLC, a         )  
6                   Washington limited liability         )  
7                   company; TUMWATER ESTATES         )  
8                   INVESTORS, a California limited     )  
9                   partnership; VELKOMMEN MOBILE         )                   No. C09-5312 BHS  
10                  PARK, LLC, a Washington limited     )  
11                  liability company; and                 )  
12                  MANUFACTURED HOUSING COMMUNITIES     )  
13                  OF WASHINGTON, a Washington         )  
14                  non-profit corporation,                 )  
15                  Plaintiffs,                             )  
16                  vs.                                     )  
17                  CITY OF TUMWATER, a municipal         )  
18                  corporation,                             )  
19                  Defendant.                             )

20                   DEPOSITION UPON ORAL EXAMINATION OF  
21                   ROBERT EICHLER

22                   February 15, 2010  
23                   Tumwater, Washington

24                   Taken Before:

25                   Connie Church, CCR #2555, RPR, CRR  
26                   Certified Court Reporter  
27                   of

28                   CAPITOL PACIFIC REPORTING, INC.  
29                   2401 Bristol Court SW, Suite A-104  
30                   Olympia, WA 98502

31                   Tel (360) 352-2054 or (800) 407-0148   Fax (360) 705-6539

32                   www.capitolpacificreporting.com  
33                   admin@capitolpacificreporting.com

Page 10

1 my mobile home park.

2 Q Do you believe that the mobile home park is, in any way,  
3 detrimental to the surrounding community?

4 A Yes, I do. I think that mobile home parks normally are  
5 considered depreciative of values. It's always been an  
6 old joke. Nobody wants to live next to an old mobile  
7 home park.

8 Q Is your mobile home park detrimental to the surrounding  
9 community?

10 A I don't know.

11 Q Do you believe that maintaining affordable housing is a  
12 legitimate goal for the City of Tumwater?

13 A Yes.

14 Q And do you believe that manufactured housing parks  
15 provide a source of affordable housing compared to other  
16 housing types? 1

17 A Yes. J \*

18 Q Okay. When did you purchase Laurel Park?

19 A In September of 1991.

20 Q How much did you pay?

21 A A million three. J

22 Q And did you finance the property at that time?

23 A Yes.

24 Q And was an appraisal done of the property?

25 A Not to my knowledge.

1 proposals to the city.

2 Q Okay. Do you know whether or not there was a preliminary  
3 plat application, whether there was the application that  
4 got you on the way to the building permit?

5 A I don't remember those details.

6 Q Okay. Is it . . . Do you have an understanding of what  
7 a preliminary plat application is?

8 A Again, let me say I'm not a developer. I'm just starting  
9 to think about developing my properties. And I don't  
10 know all the terms.

11 Q Okay. Fair enough. In terms of Laurel Park, have you  
12 ever made any application to either Thurston County or  
13 the City of Tumwater to get you on the road to building  
14 permits for redevelopment?

15 A No.]

16 Q Okay. Let's go back to your declaration, Exhibit 3. And  
17 in paragraph 6, you discuss some of the provisions of the  
18 2009 manufactured home park ordinance. Have you read the  
19 2009 manufactured home park ordinance?

20 A Yes. Just recently.

21 Q Okay. Did you read it before you signed this  
22 declaration?

23 A Not in its entirety.

24 Q In this paragraph, you state that the additional uses  
25 that you are allowed to put your property under the

1 existing zoning are not economically viable uses of your  
2 property because some, like parks and trails, are no  
3 income at all. Can you tell me what analysis you have  
4 done to determine whether additional uses would be  
5 economically viable or not?

6 A My own personal opinion and being in the business that  
7 I'm in, there are no things on this list of 23 things or  
8 whatever it is that appear to me to be economically  
9 viable.

10 Q Okay. Have you done any investigation as to the  
11 economics of doing support and child care facilities?

12 A No.

13 Q Have you done any investigation as to the economics of a  
14 church or cemetery use?

15 A No.

16 Q In the last sentence on paragraph - or page 2 carrying  
17 over to page 3, you discuss institutional uses, such as  
18 churches, cemeteries and essential public facilities.  
19 And at the top of page 3, you state a church or a  
20 cemetery is hardly a viable economic use. Can you tell  
21 me what the basis for that conclusion is?

22 A Certainly it's my opinion and it's based on reality. How  
23 could a church or a cemetery return the type of  
24 investment that a mobile home park would return.

25 Q Okay. Have you had any experience in dealing with

1 cemeteries and how they make money?

2 A No.

3 Q Did you do any investigation to support this statement  
4 that the possibility of return from such a use is  
5 illusory?

6 A Only my own opinion and informal visits with many other  
7 people in real estate and development.

8 Q Okay. Have you had any informal visits with anyone who  
9 is in the cemetery business?

10 A No.

11 Q Are you familiar with a church in South King County which  
12 is run by a Pastor Casey Treat?

13 A No.

14 Q Have you heard of churches that are referred to as  
15 mega churches?

16 A Yes.

17 Q Tell me what - your understanding of what a mega church  
18 is.

19 A I believe a mega church is a church that has a large  
20 population of churchgoers and is a building that's of  
21 much greater size than at least I would think of an  
22 average town or city church.

23 Q Have you done any analysis of the demand for real estate  
24 that is created by mega churches?

25 A No.

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1 Q Do you believe that a mega church might be interested in  
2 purchasing large chunks of property to locate their  
3 facilities?

4 A Ask me that again.

5 Q Do you believe that a large church, such as a mega  
6 church, would be interested in buying large chunks of  
7 property to locate their facilities on?

8 A I believe they might be interested in . . . Yes.

9 Q And have you done any analysis of how much a church like  
10 that might be willing to pay for property?

11 A No.

12 Q Let's go down to paragraph 7, in which you discuss the  
13 current appeal that is pending before the City of  
14 Tumwater concerning relocation of a manufactured house  
15 within Laurel Park. Can you tell me what your  
16 understanding of the dispute is in that appeal?

17 A Just one moment, please.

18 Q I'll give you a minute to read paragraph 7. That may  
19 refresh your memory.

20 (Discussion held off record.)

21 Q (BY MR. MYERS) Have you had a chance to read  
22 paragraph 7?

23 A I would like to make a comment. I read this over and I  
24 signed it. And this is my statement. But I have seen an  
25 error here --

## **EXHIBIT D**

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 1

1  
2                   UNITED STATES DISTRICT COURT  
3                   WESTERN DISTRICT OF WASHINGTON  
4                   AT TACOMA

5                   LAUREL PARK COMMUNITY, LLC, a         )  
6                   Washington limited liability         )  
7                   company; TUMWATER ESTATES         )  
8                   INVESTORS, a California limited     )  
9                   partnership; VELKOMMEN MOBILE         )                   No. C09-5312 BHS  
10                  PARK, LLC, a Washington limited     )  
11                  liability company; and                 )  
12                  MANUFACTURED HOUSING COMMUNITIES     )  
13                  OF WASHINGTON, a Washington         )  
14                  non-profit corporation,                 )  
15                  Plaintiffs,                             )  
16                  vs.                                     )  
17                  CITY OF TUMWATER, a municipal         )  
18                  corporation,                             )  
19                  Defendant.                             )

20                   DEPOSITION UPON ORAL EXAMINATION OF  
21                   JEANNE-MARIE WILSON

22                   February 15, 2010  
23                   Tumwater, Washington

24                   Taken Before:

25                   Connie Church, CCR #2555, RPR, CRR  
26                   Certified Court Reporter  
27                   of

28                   CAPITOL PACIFIC REPORTING, INC.  
29                   2401 Bristol Court SW, Suite A-104  
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32                   www.capitolpacificreporting.com  
33                   admin@capitolpacificreporting.com

1           with?

2     A   I'm an associate member of the Appraisal Institute,  
3           working towards the MAI designation.

4     Q   So you are not an MAI?

5     A   I am not.

6     Q   Can you tell me what the difference is between an  
7           associate and an MAI?

8     A   MAI has taken a significant level of courses as well as  
9           completed a demonstration report and experience credits,  
10          which are checked by the institute, and sat for the test  
11          basically.

12    Q   Okay. How many credits are necessary to get to the MAI  
13          status?

14    A   Well, there's a course of classes. I have one more class  
15          to take there and then the demo and sit for the test.

16    Q   Okay. And so you have one more class to take?

17    A   Right.

18    Q   Are you a member of any other professional associations?

19    A   Chamber of Commerce, Thurston County.

20    Q   Are you a member of any other associations concerning the  
21          real estate business?

22    A   No.

23    Q   Are you a member of the Manufactured Housing Communities  
24          of Washington?

25    A   No. I was when I was with PGP. Or rather the firm was a

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 8

1 member and I was their representative.

2 Q So you have not been a member or a participant in the  
3 Manufactured Housing Communities of Washington since  
4 1995?

5 A Right. No. Since I left the firm in 2001.

6 Q 2001.

7 A Right.

8 Q Okay. So after your completion of the three-year  
9 training program, you continued on at Palmer Groth and  
10 Pietka?

11 A Right.

12 Q And was that as an analyst and then a senior analyst?

13 A Right.

14 Q What's the difference between an analyst and a senior  
15 analyst?

16 A Experience.

17 Q When did you formally become a senior analyst?

18 A I don't recall.

19 Q How are you being compensated for your services in this  
20 lawsuit?

21 A At this point, these - work up to this point has been on  
22 an hourly basis.

23 Q What's your rate?

24 A 250.

25 Q Have you ever provided services in lawsuits before?

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 9

1 A I was in discussions with another attorney at one point  
2 in a trial that actually ended up settling out of court,  
3 so I never did any depositions or prepared any work  
4 product.

5 Q What was the nature of that lawsuit?

6 A It was a manufactured housing community in Snohomish  
7 County. It was a familial disagreement.

8 Q So it was a dispute between family members, and the value  
9 of the mobile home park was --

10 A Right.

11 Q -- an asset they were arguing about?

12 A An issue. Right.

13 Q Have you had any other lawsuits that you've had  
14 experience with?

15 A No.

16 Q Have you ever been qualified to testify as an expert  
17 witness?

18 A No.

19 Q Have you authored any publications in the last 10 years?

20 A When I was with PGP, they put together a newsletter, a  
21 manufactured housing community newsletter, for interested  
22 clients and investors. And we discussed various topics  
23 surrounding manufactured home communities and the  
24 ownership. We put that out on a quarterly basis. And I  
25 worked with a team of appraisers out of the Sacramento

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 11

1 copy of the report that you prepared dated December 7th,  
2 2009. Are you familiar with your report?

3 A Yes.

4 Q Okay. What was the nature of the appraisal problem you  
5 were asked to address?

6 A It was my understanding that plaintiff's counsel needed  
7 to establish me as an expert witness in a short period of  
8 time. And so we limited the scope of work to include  
9 valuation of the parks or the subject properties by the  
10 income approach under continued use with the  
11 understanding that I would be completing a  
12 before-and-after analysis prior to trial.

13 Q Did you complete that before-and-after analysis as part  
14 of your December 7th report?

15 A No.]

16 Q What type of report is your preliminary report?

17 A Well, I was asked to model it after the Federal  
18 26(a)(2)(B), and I called it a Summary Appraisal Report  
19 under USPAP for compliance purposes.

20 Q On page 1, it notes that you were retained on  
21 December 4th, 2009.

22 A Mm-hmm.

23 Q And your report was due on December 7th?

24 A Right.

25 Q Mr. Olsen was the one who retained you?

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 13

1 A He said that the other appraiser was not available to do  
2 the work, the original.

3 Q Was three days sufficient to do a before-and-after  
4 analysis?

5 A No.

6 Q Did you discuss with Mr. Olsen the need to do a before  
7 analysis?

8 A Yes.

9 Q Tell me what your discussions were with him.

10 A Well, obviously the case centers around the before and  
11 after values of these properties. So that would, of  
12 course, have to be established prior to trial.

13 Q What was the effective date of value for the analysis  
14 that you gave in Exhibit Number 1?

15 A December 31st, 2009 (sic).

16 Q Why did you select that date?

17 A We discussed the fact that because we were valuing it  
18 under continued use, it would be appropriate to use a  
19 date prior to Tumwater's ordinance change and the zoning,  
20 which was, I believe, March.

21 Q So the opinions that you gave --

22 A Oh, I'm sorry. Did I say . . . December 31, 2008.

23 Q 2008. So the opinions of value that you have on page 3  
24 reflect a value before the city adopted the mobile home  
25 park ordinance?

1    A    Correct.

2    Q    And the opinions as to value that you have are for  
3       fee simple market value?

4    A    Right.

5    Q    How do you define that term?

6    A    Well, I included it in the supplemental appraisal  
7       information on page 12.

8    Q    So the definition of "market value" that you have on  
9       page 12 is the same as fee simple market value; correct?

10   A    Yes.

11   Q    And were you defining it in an as-is condition?

12   A    Yes.

13   Q    Hence the definition of "as-is market value" on page 12?

14   A    Right.

15   Q    What assumptions did you make about highest and best use  
16       in defining the value of these mobile home parks?

17   A    My assumption as to highest and best use was continued  
18       use as a manufactured home community.

19   Q    What methodologies were available to you to estimate the  
20       value of the mobile home parks in preparation for this  
21       report?

22   A    Well, we specific - I specifically used the income  
23       capitalization approach to value.

24   Q    Okay. What other methodologies were available?

25   A    Sales comparison approach is often another technique or

**Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson**

Page 17

would have printed the current zoning as well as the zoning under my effective date of valuation. So I have both in my file.

Q Okay. Can you tell me why your report does not mention the mobile home park zoning?

A Because the limited scope of my assignment was under continued use as a manufactured home park.

Q And you brought your file with you today in response to  
the subpoena --

A I did.

O -- that we sent?

A Mm-hmm.

Q Okay. What I'd like to do now is take a short break and examine what you brought off the record, and then we'll continue back on the record.

(Recess was taken.)

MR. MYERS: Let's go back on the record.

Q (BY MR. MYERS) Mrs. Wilson, in your notebook, you have it organized with tabs. First tab is single-family residential comps from Mr. Shapiro, which includes a table from his analysis; multifamily comps from Mr. Shapiro; review document to Walt, which is your February 7th report; copy of your January 10th declaration. And that's a draft that . . . Is that the date you began to prepare that declaration, the

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 42

1 allowed in that district?

2 A No.

3 Q Have you examined any of the conditional uses allowed in  
4 the Manufactured Home Park Zoning District to determine  
5 whether they could be economically viable uses?

6 A No.

7 Q In paragraph 10, you state that, "The ordinances have  
8 transferred property rights from park owners to their  
9 tenants." Did you draft that sentence?

10 A Yes.

11 Q What property right has been transferred to the tenants?

12 A Well, the bundle of sticks, I think, which is sort of the  
13 basis of ownership, because the park owner can't any  
14 longer redevelop this park, has - he's restricted in that  
15 he can only continue the existing use. And I believe  
16 that gives ownership, in part, to the existing tenant  
17 base.

18 Q Does the tenant have the right to redevelop the park?

19 A No.

20 Q Does the zoning ordinance prevent the landlord from  
21 terminating his tenants' tenancy?

22 A No.

23 Q You state here that the zone change by the district is  
24 akin to a long-term lease in favor of the tenants. How  
25 is it similar to a long-term lease?

1 A Basic, yeah.

2 Q Would it be your understanding that the uses authorized  
3 by the zoning would be allowed uses, accessory uses and  
4 conditional uses?

5 A Right. Right.

6 Q And you have done no analysis to see whether or not the  
7 conditional uses authorized by the zoning code are not  
8 economically viable; is that right?

9 A When I have considered the primary uses allowed, they  
10 were limited to such a degree that, no, I didn't go on  
11 and look at the conditional uses.

12 Q Is it possible that a conditional use would be  
13 economically viable, such as a church or a cemetery?

14 A I'm sure it's possible.

15 Q And would you agree that for the three parks in Tumwater,  
16 operation of a manufactured housing community is an  
17 economically viable use?

18 A Yes.

19 Q I want to go back to paragraph 10, because I'm a little  
20 confused as to exactly which property right the tenant  
21 receives from the park owner. You mentioned the bundle  
22 of sticks. Can you identify which stick?

23 A I believe the tenant now has a more secure position with  
24 the ground lease than they would have in the before  
25 situation. But I cannot label a specific stick for you.

1 A No. They're just more established.

2 Q What do you mean more established?

3 A Than some of the uses. They've been there longer than  
4 some of the newer subdivisions that have gone in. That's  
5 all.]

6 Q Okay. In paragraph 15 on page 5 of your declaration, you  
7 talk about how ordinances have shifted value from park  
8 owners to tenants. Paragraph 15. You see that?

9 A Okay. Yeah.

10 Q What methodology did you use to determine whether there  
11 was a shift in value from park owners to tenants?

12 A I don't think there was a methodology. It's - it's an  
13 opinion.

14 Q And what's the factual basis for that opinion?

15 A If the landowner doesn't have full use of their property,  
16 they have lost value.

17 Q Can you quantify how much value has been shifted, in your  
18 opinion, from the park owners to the tenants?

19 A No.]

20 Q Did you discuss this value shift in your December 7th,  
21 2009 report?

22 A No.

23 Q Has this value shift been something created by a change  
24 in circumstances since preparation of your report in  
25 December of 2009?

Laurel Park v. City of Tumwater  
Deposition of Jeanne-Marie Wilson

Page 60

1           that a fair statement?

2   A   In the immediate time frame. Yes.

3   Q   Okay. Have you done any analysis to determine when the  
4       market might take an upswing in the future?

5   A   It's the basis of conversation. But I haven't done any  
6       specific analysis.

7   Q   Do you have any opinions as to when the market will take  
8       an upswing in the future?

9   A   I think 2010 is going to be flat. And after that, I  
10      think it's anybody's guess.

11   Q   Do you have any opinions as to when the park owners might  
12      be able to realize their expected return on the  
13      investment by changing to a different use if the zoning  
14      ordinance had not been adopted?

15   A   Have I done any analysis to determine when they could do  
16      that?

17   Q   Yes.

18   A   Okay. No.

19   Q   Your opinions in paragraph 20 concerning the impact of  
20      value for Velkommen, what impact do you have - do you  
21      attribute to the offers of 1.75 and 1.6 million that were  
22      made to Velkommen?

23   A   I believe they were associated with potential  
24      redevelopment or alternative uses of the property.

25   Q   And how did you determine that those were based on

1 (Recess was taken.)

2 MR. MYERS: Okay. Let's go back on the record.

3    Q    (BY MR. MYERS) Mrs. Wilson, we were talking about  
4           paragraph 20 of your declaration.

5 A Okay.

6 Q And you mentioned that Velkommen received offers of 1.75  
7 \* million dollars. Do you believe those were  
8 above-market-value offers for the Velkommen property?

9 A I think that there was a premium associated with that  
10 price given the existing income stream from the  
11 manufactured home community.

Q So do you believe that those offers were actually worth more than what you had appraised the property for?

4 A I appraised it under continued use as a park. And I  
5 believe that those values reflect the potential for  
6 redevelopment with the underlying land or the potential  
7 for alternative uses.

8 Q Now, Mr. Nissing's offer was 1.6 million. And the value  
9 range that you identified was 1.4 to 1.5 million;  
10 correct?

21 A Right. Mm-hmm.

Q So the difference there is between 200 and 100 thousand dollars, depending on which cap rate is assigned.

24 A Right.

Q Is it . . . Is that the value of the premium that you're

1 saying was existing for Velkommen?

2 A In light of my valuation, which was limited in scope,  
3 which we discussed previously, you could say that. Yes.

4 Q Okay. Is it possible that Mr. Nissing or another  
5 reasonable buyer would have increased the space rent at  
6 Velkommen to increase the income beyond the numbers that  
7 you evaluated?

8 A Yes.

9 Q Is that a possible explanation for why a buyer might  
10 offer more than what you had valued the property at?

11 A Yes.

12 Q In paragraph 21, you talk about Wildwood Mobile Home Park  
13 in Lacey.

14 A Mm-hmm.

15 Q What leads you to the conclusion that there was a premium  
16 associated with that?

17 A I appraised . . . My office appraised that property for  
18 the sale in June 2006.

19 Q Is that one of the comparables that was listed in  
20 Exhibit 3?

21 A Yes.

22 Q And it's comparable number five; correct?

23 A Correct.

24 Q What value did you assign in your appraisal of Wildwood  
25 that you just referred to?

1           redeveloping the Wildwood property?

2   A   No.

3   Q   Okay. Let me ask you this: As an appraiser, what  
4         methodology would you use in trying to measure what value  
5         the market is assigning to this premium that you have  
6         opined about?

7   A   Well, it's the before-and-after valuation that I haven't  
8         done yet. But that was understood that I would be  
9         completing after we did this preliminary valuation.

10   Q   Have you done that analysis, as you sit here today?

11   A   I have not.

12   Q   Would an analysis of comparable sales and a comparison  
13         between the sales approach and the income approach help  
14         identify what the amount of that premium might be?

15   A   I believe the sales and income approach help characterize  
16         the value of the park under existing use. And the  
17         analysis in the before situation would provide us with  
18         the difference to determine the premium.

19   Q   Is there - is there a formula that you might use in order  
20         to identify how much that would be?

21   A   No.

22   Q   Is it based on any established methodology that is used  
23         by appraisers under USPAP?

24   A   Well, in the before situation, you'd be valuing the  
25         property under its highest and best use with the zoning

1       in place at that time. You would go through a  
2       fundamental . . . There's various ways you could go  
3       through that valuation process. One of them would be a  
4       fundamental supply and demand analysis, looking at the  
5       various opportunities under the prior zoning and then  
6       determining what the highest and best use was and then  
7       going to value that use with comparable sales.

8     Q   If the highest and best use in the before condition was  
9       as a mobile home park and mobile home park is allowed in  
10      the after condition, is there any way to determine any  
11      difference in value between the before and the after?

12    A   It's the valuation . . . You're saying if they were both  
13      highest and best use as a park?

14    Q   Yes. In the before condition.

15    A   Right. If that was your conclusion?

16    Q   Yes.

17    A   Well, I wouldn't think there would be any premium then,  
18      if that was the conclusion of the highest and best use  
19      analysis.

20    Q   Okay. Your opinions in paragraph 21 and 22 concerning  
21      Wildwood and Allimor, those were not discussed in your  
22      December 2009 report; correct?

23    A   Correct.

24    Q   And the information that was used to generate these  
25      opinions, that was available as of December 2009;

1 C E R T I F I C A T E

2

3 I, CONNIE CHURCH, a duly authorized Court Reporter and  
4 Notary Public in and for the State of Washington, residing at  
5 Montesano, do hereby certify:

6 That the foregoing deposition of JEANNE-MARIE WILSON  
7 was taken before me on February 15, 2010, and thereafter  
8 transcribed by me by means of computer-aided transcription; that  
9 the transcript is a full, true and complete transcript of the  
10 testimony of said witness;

11 That the witness, before examination, was by me duly  
12 sworn to testify the truth, the whole truth and nothing but the  
13 truth, and that the witness reserved signature;

14 That I am not a relative, employee, attorney or  
15 counsel of any party to this action or relative or employee of  
16 any such attorney or counsel, and I am not financially  
17 interested in the said action or the outcome thereof;

18 That upon completion of signature, if required, I  
19 shall herewith securely seal the original transcript and serve  
20 same upon Mr. Jeff Myers, counsel for the Defendant.

21 IN WITNESS WHEREOF, I have hereunto set my hand and  
22 affixed my official seal this 24th day of February, 2010.

23

24

25

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CONNIE CHURCH  
CERTIFIED COURT REPORTER

February 15, 2010

Capitol Pacific Reporting, Inc. (800) 407-0148

## **EXHIBIT E**

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## Chapter 18.08

### RSR RESIDENTIAL/SENSITIVE RESOURCE ZONE DISTRICT

Sections:

- 18.08.010 Intent.
- 18.08.020 Permitted uses.
- 18.08.030 Accessory uses.
- 18.08.040 Conditional uses.
- 18.08.050 Density regulations.
- 18.08.060 Conversion plans.
- 18.08.070 Clearing and grading activities.
- 18.08.080 Screening and buffering requirements.

**18.08.010 Intent.**

The intent of the Residential/Sensitive Resource (RSR) zone district is to accommodate and establish low-density residential neighborhoods in a manner that is compatible with areas of unique open space character and environmental sensitivity.

(Ord. O95-014, Added, 7/18/1995; Ord. O95-035, Amended, 12/19/1995)

**18.08.020 Permitted uses.**

Permitted uses in the RSR zone district are as follows:

- A. Single-family detached dwellings;
- B. Designated manufactured homes on single lots of record, in accordance with the provisions of Tumwater Municipal Code Chapter 18.48;
- C. Parks, trails, open space areas, and other related passive recreation facilities;
- D. Wildlife refuges and forest preserves;
- E. Support facilities;
- F. Accessory buildings or structures to a permitted use on a contiguous lot or lots under the same ownership within the same zone district;
- G. Family child care home; child mini-day care center, subject to review by the development services director;
- H. Adult family homes, residential care facilities;
- I. The housing, care and keeping of livestock, except it is unlawful to house livestock in a covered structure that is located within fifty feet of any property line. (Where this provision may conflict with other provisions of the Tumwater Municipal Code, including Section 6.08.010, this provision shall control);
- J. Agricultural operations incidental and accessory to a single-family residential use, including any facility, accessory building, structure, or land use for the production for personal and/or small-scale commercial purposes of crops (including trees), horticulture, poultry, fish, or livestock.
- K. Attached wireless communication facilities, except that it is prohibited to attach a non-accessory wireless communication antenna on a single family or two-family dwelling;\*

L. Accessory dwelling units, provided they meet the requirements of Tumwater Municipal Code 18.42.010.

\*Subject to Federal Aviation Administration (FAA) standards and approval, and pursuant to provisions of Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."  
(Ord. O2005-011, Amended, 07/05/2005; Ord. O2000-004, Amended, 07/18/2000; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Amended, 12/19/1995; Ord. O95-014, Added, 07/18/1995)

#### **18.08.030 Accessory uses.**

Accessory uses in the RSR zone district are as follows:

- A. Structures for the storage of equipment and/or produce, including but not limited to greenhouses, barns, toolsheds, and storage sheds;
- B. Structures directly related to the housing, care and keeping of livestock, except it is unlawful to house livestock in a covered structure that is located within fifty feet of any property line. (Where this provision may conflict with other provisions of the Tumwater Municipal Code, including Section 6.08.010, this provision shall control);
- C. Home occupations, as approved by the director of development services;
- D. Noncommercial recreational structures which could include swimming pools and recreational ball courts;
- E. Energy systems;
- F. Single-family conversions.
- G. Accessory wireless communication antenna.\*

\*Subject to Federal Aviation Administration (FAA) standards and approval, and pursuant to provisions of Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."

(Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Amended, 12/19/1995; Ord. O95-014, Added, 07/18/1995)

#### **18.08.040 Conditional uses.**

Conditional uses in the RSR zone district are as follows:

- A. Churches;
- B. Freestanding wireless communication facilities;\*
- C. Cemeteries;
- D. Child day care center;
- E. Public and/or private schools;
- F. Neighborhood community center;
- G. Group foster homes.

\*Subject to Federal Aviation Administration (FAA) standards and approval, and pursuant to provisions of Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."

(Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Amended, 12/19/1995; Ord. O95-014, Added, 07/18/1995)

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## Chapter 18.10 SFL SINGLE-FAMILY LOW DENSITY RESIDENTIAL ZONE DISTRICT

### Sections:

- 18.10.010 Intent.
- 18.10.020 Permitted uses.
- 18.10.030 Accessory uses.
- 18.10.040 Conditional uses.
- 18.10.050 Density regulations.
- 18.10.060 Conversion plans.
- 18.10.070 Screening and buffering requirements.

### **18.10.010 Intent.**

The intent of the Single Family Low-Density Residential (SFL) zone district is to:

- A. Preserve and establish peaceful low-density neighborhoods in which owner-occupied single-family structures are the dominant form of dwelling unit;
- B. Provide designated areas in which a minimum net density of four units per acre and a maximum net density of seven units per acre apply to promote the efficient use of land;
- C. Guide residential development in such a manner as to encourage and plan for the availability of public services and community facilities such as utilities, police and fire protection, streets, schools, parks and recreation.
- D. Encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere and contain a variety of housing types.
- E. Ensure that development without municipal utilities is at a density and in a configuration that enables cost effective urban density in-fill development when municipal utilities become available.

(Ord. O95-035, Added, 12/19/1995)

### **18.10.020 Permitted uses.**

Permitted uses in the SFL district are as follows:

- A. Single-family detached dwellings;
- B. Designated manufactured homes on single lots of record, in accordance with the provisions of Tumwater Municipal Code Chapter 18.48;
- C. Parks, trails, open space areas, and other related recreation facilities;
- D. Support facilities;
- E. Residential planned unit developments;
- F. Family child care home; child mini-day care center, subject to review by the development services director;
- G. Adult family homes, residential care facilities;
- H. Duplexes which were legally established prior to January 1, 1996, except where there is a cessation of the use for three or more years.
- I. Attached wireless communication facilities, except that it is prohibited to

attach a non-accessory wireless communication antenna on a single family or two-family dwelling;\*

\*Emergency communication towers and antennae and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore that both uses are subject to provisions for wireless communication facilities in Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."

(Ord. O2005-011, Amended, 07/05/2005; Ord. O2000-004, Amended, 07/18/2000; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

#### **18.10.030 Accessory uses.**

Accessory uses in the SFL district are as follows:

- A. Storage sheds, toolsheds, greenhouses;
- B. Home occupations, as approved by the Director of Development Services;
- C. Noncommercial recreational structures which could include but are not limited to swimming pools and recreational ball courts;
- D. Energy systems;
- E. Accessory dwelling unit, in accordance with the provisions of Tumwater Municipal Code Chapter 18.42.010.
- F. Accessory wireless communication antenna,\*

\*Emergency communication towers and antennae and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore that both uses are subject to provisions for wireless communication facilities in Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."

(Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

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#### **18.10.040 Conditional uses.**

Conditional uses in the SFL zone district are as follows:

- A. Churches;
- B. Freestanding wireless communication facilities;\*
- C. Cemeteries;
- D. Child day care center;
- E. Public and/or private schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. The following essential public facilities:
  - 1. Emergency communications towers and antennae\*
- I. Group foster homes;
- J. Agriculture.
- K. Bed and breakfasts.

\*Emergency communication towers and antennae and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and

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## Chapter 18.12

### SFM SINGLE-FAMILY MEDIUM DENSITY RESIDENTIAL ZONE DISTRICT

Sections:

- 18.12.010 Intent.
- 18.12.020 Permitted uses.
- 18.12.030 Accessory uses.
- 18.12.040 Conditional uses.
- 18.12.050 Density regulations.
- 18.12.060 Conversion plans.
- 18.12.070 Screening and buffering requirements.

#### **18.12.010 Intent.**

The intent of the Single Family Medium-Density Residential (SFM) zone district is to:

- A. Provide for a high standard of development for residential areas of moderate density in which single-family housing is the primary form of development;
- B. Provide designated areas in which a minimum net density of six units per acre and a maximum net density of nine units per acre apply to promote the efficient use of land;
- C. Guide residential development in such a manner as to encourage and plan for the availability of public services and community facilities such as utilities, police and fire protection, streets, schools, parks and recreation.
- D. Encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere and contain a variety of housing types.
- E. Ensure that development without municipal utilities is at a density and in a configuration that enables cost effective urban density in-fill development when municipal utilities become available.

(Ord. O95-035, Added, 12/19/1995)

#### **18.12.020 Permitted uses.**

Permitted uses in the SFM district are as follows:

- A. Single-family detached dwellings;
- B. Single-family attached dwellings, including but not limited to townhouses and rowhouses, within a residential planned unit development;
- C. Duplex on at least six thousand square feet of land area;
- D. Designated manufactured homes on single lots of record, in accordance with the provisions of Tumwater Municipal Code Chapter 18.48;
- E. Parks, trails, open space areas, and other related recreation facilities;
- F. Support facilities;
- G. Residential planned unit developments;
- H. Family child care home; child mini-day care center, subject to review by the Development Services Director;

- I. Adult family homes, residential care facilities;
- J. Attached wireless communication facilities, except that it is prohibited to attach a non-accessory wireless communication antenna on a single family or two-family dwelling;\*

\*Emergency communication towers and antennae and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore that both uses are subject to provisions for wireless communication facilities in Tumwater Municipal Code, Chapter 11.20, Communication Antennae and Towers.

(Ord. O2005-011, Amended, 07/05/2005; Ord. O2000-004, Amended, 07/18/2000; Ord. O98-009, Amended, 10/20/1998; Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

#### **18.12.030 Accessory uses.**

Accessory uses in the SFM district are as follows:

- A. Storage sheds, toolsheds, greenhouses;
- B Home occupations, as approved by the Director of Development Services;
- C. Noncommercial recreational structures, which could include but are not limited to swimming pools and recreational ball courts;
- D. Energy systems;
- E. Accessory dwelling unit, in accordance with the provisions of Tumwater Municipal Code Chapter 18.42.010.
- F. Accessory wireless communication antenna;\*

\*Emergency communication towers and antennae and wireless communication facilities are subject to Federal Aviation Administration (FAA) standards and approval, and furthermore that both uses are subject to provisions for wireless communication facilities in Tumwater Municipal Code, Chapter 11.20, "Communication Antennae and Towers."

(Ord. O97-019, Amended, 06/17/1997; Ord. O95-035, Added, 12/19/1995)

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#### **18.12.040 Conditional uses.**

Conditional uses in the SFM zone district are as follows:

- A. Churches;
- B. Freestanding wireless communication facilities;\*
- C. Cemeteries;
- D. Child day care center;
- E. Public and/or private schools;
- F. Neighborhood community center;
- G. Neighborhood-oriented commercial center;
- H. Private clubs and lodges;
- I. The following essential public facilities:
  - 1. Emergency communications towers and antennae\*
- J. Group foster homes;
- K. Agriculture.
- L. Bed and breakfasts.